AFFIRMATIVE ACTION

Mr. MCCONNELL. Mr. President, I would like to address the Supreme Court's historic decision in the Adarand case handed down earlier this week. A majority of the Court, led by Justice Sandra Day O'Connor, found that preference and set-aside programs ordered by the Federal Government must be examined under the strictest judicial scrutiny. Justice O'Connor's opinion states that equal protection of the laws, as guaranteed by the Constitution, extends to every person, not to particular groups.

These preference programs are based on notions of group entitlement. As a practical matter, this decision will make it very difficult for the Federal Government to justify the more than 150 preference programs that currently exist. This decision is an important step in making this Nation truly color blind.

The case involved a Federal subcontract on a highway project. Under the Surface Transportation Act of 1987, Department of Transportation gives a bonus to a general contractor who hires subcontractors who qualify as socially and economically disadvantaged. Under the Small Business Administration definitions, disadvantaged is presumed to include African-Americans, Hispanic-Americans, women, native Americans, and other minority group members.

Despite Adarand Construction's lowest bid on a Colorado highway project to build a guardrail, the general contractor gave the subcontract to a minority firm. Adarand sued, claiming a violation of its right to equal protection.

Justice O'Connor, citing earlier affirmative action cases which had clouded the issue of the validity of these programs, wrote that classification based upon race which appear to be benign are not really benign, but ''are in fact motivated by illegitimate notions of racial inferiority or simple racial politics.''—from her own plurality opinion in Croson.

This decision comes in the midst of lots of attention to these preference programs. There is a movement in California to abolish preference and set aside programs. Gov. Pete Wilson recently did away with preferences in State employment by executive order and there is likely to be a ballot initiative next year. President Clinton has ordered a review of Federal preference policies, and congressional leaders, including the majority leader, have called for close examination of these programs.

Americans have no tolerance for racial discrimination, but they also have no patience for discrimination which is committed under the guise of making up lost opportunity for those who belong to certain groups. You can't discriminate against one group to benefit another. Justice Scalia said it best in his concurrence in the Adarand case,

> . . . [U]nder our Constitution there can be no such thing as either a debtor or creditor race. . . . In the eyes of the government, we are just one race here.

Mr. President, in the Foreign Operations Subcommittee of the Appropriations Committee, which I chair, we will have an opportunity to review at least one of these set-aside programs. It requires a percentage of certain categories of foreign aid to be managed by minority contractors. Under the Court's decision in the Adarand case, we will now examine the set-aside program under the strict scrutiny test. The administration will have to establish a compelling interest to justify the continuation of preference and set-aside programs. In this time of very scarce dollars, and especially scarce in the context of foreign aid, it's hard to imagine the administration's justification for anything other than the most efficient and economical use of our foreign aid dollars.

I look forward to the ramifications and implications of the Adarand case and the revision and even end to many of the Federal Government's preference programs and policies.

The PRESIDING OFFICER. The Senator from Montana.

FEDERAL AVIATION ADMINISTRATION REFORM

Mr. BURNS. Mr. President, yesterday my good friend, the distinguished Senator from Oklahoma, introduced a bill to reform the FAA. There is probably no institution in this town that needs reform more than it does. In my home State of Montana we take aviation, particularly general aviation, very seriously because we are a very large State but we are the 44th in population. We are the fourth largest State, 148,000 square miles. The Chair understands about that, coming from Wyoming, our good friend to the south. So you could say both of us have quite a lot in common. There is quite a lot of dirt between light bulbs in our part of the world and not many folks in between. So, for us having general aviation in a healthy mode and our ability to fly point to point is not a luxury, it is often a necessity in the West.

So we have a very strong, hard-working and well organized pilot community in Montana. I am proud of my strong relationship with the thousands of pilots in my State. Many of them are flying ranchers and that is the way they get their parts, that is the way they do a lot of business, a lot of their travel.

I have been watching the debate about reform of the Federal Aviation Administration and the Air Traffic Control system with some concern, and I share those concerns with my friend from Oklahoma. The pilots who talk to me tell of outdated equipment that their air traffic controllers are forced to use. I have heard the same concerns from air traffic controllers all over the country, as a matter of fact. They tell me about the concerns that the FAA does not get the necessary funds and it is absolutely hamstrung in some areas by layers and layers of red tape. They say the FAA is ripe for reform. After serving in this body now in my second term, after 6 years, I would have to agree with that.

But many of the proposals I have seen are only superficially attractive. The numbers just do not add up. The administration's ATC Corporation idea—there is no industry support for an entirely privatized ATC.

So today I am joining with Senator INHOFE in his introduction of legislation to provide some realistic, meaningful reform for the FAA. It will reestablish the FAA as an independent agency with an administrator who has a fixed term in office of 7 years and a management advisory committee made up of members of the private sector to advise the administrator on management policy, spending, and regulatory matters.

This measure will provide the FAA with major personnel, procurement and finance reforms that I think it needs. It will mandate that the FAA take action on safety-critical regulations in a more timely manner. This bill will give the FAA more flexibility in making corrections without risking its record of safety.

It is my hope this bill will be a starting point from which we can gain some consensus among this body, and in this Congress, and we hope that consensus will evolve rather quickly. I understand Senator MCCAIN is also working on a proposal to reform FAA. He is the chairman of the Aviation Subcommittee on the Commerce Committee. His knowledge of not only flight but also this agency is unexcelled, and I hope he will welcome this bill and that it will be a valuable contribution to what he is trying to do. Maybe we can really get together and put reform on the fast track. We can work together. I think it can be supported by everyone in the aviation community. It is needed.

Also, we have to be very mindful that not just airlines use FAA. It is very important we maintain it at a healthy level for general aviation because of the points I spoke about earlier on today.

With that, I support this reform as it starts down the track. We hope we can get a consensus and reform it before the snow flies this fall.

Mr. President, seeing no other Senators on the floor, I yield the floor and I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. WELLSTONE. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.